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VIA HAND DELIVERY

Magalie Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20054

Re: CS Docket No. 98-201
Satellite Delivery of Network Signals to Unserved Households
for Purposes of the Satellite Home Viewer Act
Reply Comments of the New Mexico Broadcasters Association

Dear Ms. Salas:

Enclosed, on behalf of the New Mexico Broadcasters Association, are the original and 11 copies of its Reply Comments in CS Docket No. 98-20.

If you have any questions, please contact me.

Very truly yours,



Paul J. Feldman
Counsel for
The New Mexico Broadcasters
Association

PJF/jr

Enclosures

cc: Mr. Don Fowler (w/encl.)
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Before the
Federal Communications Commission
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In the Matter of)
)
Satellite Delivery of Network Signals)
to Unserved Households for)
Purposes of the Satellite Home)
Viewer Act)
)
Part 73 Definition and Measurement)
of Signals of Grade B Intensity)

CS Docket No. 98-201
RM No. 9335
RM No. 9345

REPLY COMMENTS OF THE NEW MEXICO BROADCASTERS ASSOCIATION

The New Mexico Broadcasters Association ("NMBA"), by their attorneys, hereby file these Reply comments in response to the Commission's Notice of Proposed Rulemaking, released November 17, 1998, in the above-captioned proceeding ("*Notice*"). NMBA urges the Commission to reject proposed modifications to the definition of Grade B signal intensity that would impermissibly and irrationally reduce a station's protected Grade B area to a minor fraction of its existing service area, thus substantially impairing the ability of stations to provide free over-the-air local service to their communities, and to low income rural viewers who obtain their only service through the extensive network of translators operated by NMBA stations.

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I. Introduction

As was noted in its initial Comments in this proceeding, Members of NMBA operate full power, network affiliated television stations.¹ Each of these stations have, for many years, provided high quality service to their communities, including important news, weather, public affairs, public service announcements and other programming directed to meet the needs of their communities for local information. Furthermore, in order to provide service to rural low income viewers disbursed throughout the 160,000 square miles of New Mexico, the NMBA affiliate stations operate an extensive network of 298 translators. See Exhibit A to NMBA Comments. However, as discussed extensively in the NMBA Initial Comments, the production costs of producing local programming and maintaining a substantial translator network are high, and the proposals in this proceeding, which could reduce the area of exclusivity for NMBA stations by over 70 percent, seriously threaten the economic basis for the production and broadcast of local programming, and more importantly, the operation of this extensive translator network.

¹ NMBA network affiliate stations are as follows: KASY-TV, Albuquerque (UPN); KOAT-TV, Albuquerque (ABC); KOB-TV, Albuquerque (NBC); KRQE(TV), Albuquerque (CBS); KOCT(TV), Carlsbad (ABC); KVIH-TV, Clovis (ABC); KOB(TV), Farmington (NBC); KHFT(TV), Hobbs (UPN); KZIA(TV), Las Cruces (UPN); KBIM-TV, Roswell (CBS); KOB(TV), Roswell (NBC); KASA-TV, Sante Fe (FOX); KOVT(TV), Silver City (ABC).

II. References in the Comments to the Need to Provide Network Signals to Rural Viewers Should Not be Taken to Mean That All or Most Rural Viewers are in “Unserved Households”.

In these Reply Comments, NMBA addresses again the issue of service to low income rural viewers. Numerous commenters, both broadcasters and satellite carriers, noted evidence that in enacting SHVA, Congress primarily intended to enhance the delivery of network signals to a small number of viewers who cannot receive such signals over-the-air, and that such viewers are often located in rural areas.² However, NMBA seeks to ensure that the Commission does not confuse a basic principle of SHVA: that Congress intended to promote satellite delivery of network service only to truly unserved homes. While many of the small class of “unserved homes” are in rural areas, that does not mean that most rural homes fall under the definition of “unserved”. Indeed, as was shown in the Initial Comments of NMBA, through an extensive network of translators, the NMBA member stations provide high quality free over-the-air service to rural viewers throughout the State of New Mexico.

The importance of recognizing the distinction between “unserved” households and rural households is that the Commission should not take actions designed to generically increase satellite delivery of service to households in rural areas, just because they are in rural areas, and regardless of whether such households meet the definition of “unserved”. Such an approach would not only contradict Congressional

² *E.g., House Report (II)* at 20 states: “The Committee believes that this approach will satisfy the public interest in making available network programming in these (typically rural) areas, while also respecting the public interest in protecting the network-affiliate distribution system.”

intent in enacting SHVA, but would do a great disservice to rural communities that rely on an economically viable system of translators that deliver free programming over-the-air to all viewers. The greatest disservice would be to undercut the system that delivers free programming to rural low income viewers who cannot afford satellite TV services.

III. The Satellite Carriers Failed to Provide Justification for Use of the TIREM Methodology in Connection With SHVA.

One of the major proposals articulated in the comments of the satellite carriers is the need for the Commission to adopt the "TIREM" methodology to determine whether a household can receive a signal of Grade B intensity. See, e.g., Comments of Satellite Communications and Broadcasting Association ("SBCA") at page 15, Comments of EchoStar Communications Corporation at page 8, Comments of Primestar Partners at page 21. The Commission, however, just recently rejected the use of the TIREM methodology in predicting service and interference for DTV. Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order In the Matter of Advanced Television Systems, 13 FCC Rcd 7418, (1998) ("*DTV Reconsideration Order*").

In its *DTV Reconsideration Order*, the Commission notes that in choosing a methodology for calculating service areas and interference, a number of alternative propagation models including both Longley-Rice and TIREM were considered. The Commission nevertheless determined that the Longley-Rice propagation model was the most appropriate model by which to measure service and interference for the digital television system that will be operated in this country well into the 21st century.

Furthermore, in the *DTV Reconsideration Order*, the Commission explicitly rejected the TIREM methodology for two very good reasons: TIREM is proprietary in nature and furthermore, TIREM can yield very different results depending upon its implementation. In the present proceeding, none of the satellite carriers made any valid showing which should lead the Commission to now use TIREM for SHVA purposes. One commenter, SBCA, states that TIREM is non-proprietary. In its Engineering Statement, however, SBCA fails to provide any viable explanation of why TIREM is non-proprietary, asserting only that "given that there will be a modest number of potential customers for efficient and easy to use software, it's likely that commercial software vendors will package suitable offering for that user community". At best, this statement is inconclusive and, in fact, is not responsive to the "proprietary" issue at all. Moreover, none of the satellite carriers addressed the Commission's concern that TIREM results can yield different results depending on its implementation, nor did they disprove the Commission's conclusion that parties using the Longley-Rice model will be able to achieve the same results. This need for uniformity is vital and cannot be ignored. Furthermore, while the satellite carriers suggest that TIREM's analysis of vegetation makes it more accurate than Longley-Rice, the Carriers appear to ignore the fact that vegetation patterns themselves change throughout the year, calling into question such alleged additional accuracy.

In sum, in light of the Commission's recent finding that the Longley-Rice propagation methodology is the most appropriate model for calculating DTV service and interference over-the-air, it would be irrational for the Commission to use a different and

previously rejected methodology in determining over-the air signal strength for SHVA purposes.

IV. Conclusion

SHVA froze the definition of Grade B signal intensity, for SHVA enforcement purposes, to the standards then in existence in 1988. However, even if the Commission did have the authority to modify those standards for SHVA purposes, any significant modification would reduce the viewers of network affiliate stations, reducing the revenues of those stations, and inevitably forcing those stations to reduce the provision of free over-the-air local programming. Such a result would be contrary to Congress' intent in enacting SHVA, and contrary to the Commission's own principles of localism. The Commission must reject, as unreasonable and beyond its authority, proposals to modify the Congressionally mandated definition of "unserved household".

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Feldman", with a long horizontal flourish extending to the right.

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